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No. 81-2357

In The

Supreme Court of the United States

October Term 1981

JOHN G. RINALDO LIMITED PARTNERSHIP NUMBER 14, JOHN G. RINALDO and GAY TAVI RINALDO,

Petitioners,

v.

ROADRUNNER LAKE PARKS, INC., et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
COUNTER-STATEMENT OF THE CASE	1
ARGUMENT	7
CONCLUSION	9

TABLE OF AUTHORITIES

Cases: *Page*

In Re Woods,
143 U.S. 202, 36 L. Ed. 125, 12 S. Ct. 417 (1892). 8

Magnum Import Co. v. Cody,
262 U.S. 159, 67 L. Ed. 922, 43 S. Ct. 531 (1923). 7,8

National Labor Relations Board v. Pittsburgh S.S. Co.,
340 U.S. 498, 95 L. Ed. 479, 71 S. Ct. 453 (1951). 8

Rice v. Sioux City Memorial Park Cemetery,
349 U.S. 70, 99 L. Ed. 897, 75 S. Ct. 614 (1955) .. 9

Thomas M. Fields v. United States,
205 U.S. 292, 51 L. Ed. 807, 27 S. Ct. 543 (1907). 8

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COUNTER-STATEMENT OF THE CASE

Petitioners (hereafter jointly referred to as "Rinaldo") have taken considerable liberties with their recitation of the facts. The true facts, however, have been the subject of laborious judicial inquiry over the last six years in four tribunals, resulting in final judgments against Rinaldo in both the Arizona Court of Appeals and the Ninth Circuit Court of Appeals. It is ironic therefore that Rinaldo now claims

that he has been deprived of his "day in court". To set the record straight, we offer the following counter-statement of the case.

In April 1974, Respondents (hereafter jointly referred to as "Roadrunner") sold a trailer park to Rinaldo. A portion of the purchase price was deferred and was evidenced by a promissory note from Rinaldo to Roadrunner for $332,215.36 secured by a Deed of Trust on the trailer park. After the sale escrow closed, it was discovered that by clerical error prepaid lease payments were not properly prorated at the closing and, therefore, Rinaldo owed Roadrunner an additional $18,000.00. Rinaldo refused to pay the additional sum and so Roadrunner filed suit against Rinaldo in state court ("pro-rate suit") to recover the amount owed.

After one day of trial in the "pro-rate suit" the parties reached a settlement in open court which provided that Rinaldo would pay Roadrunner $17,000, Roadrunner would dismiss the suit, and the parties would execute a mutual release.

After the terms of the settlement had been carried out, Rinaldo grasped upon the language of the release instrument, which had been inartfully drawn, and claimed that Roadrunner had thereby released him not only from the pro-rate suit claims but had also released him from the $332,215.36 purchase money note/deed of trust. Upon hearing Rinaldo's outrageous position, Roadrunner returned the $17,000.00 settlement proceeds to Rinaldo and petitioned the court to set aside the settlement and dismissal.

On November 12, 1976, Roadrunner's petition came on for hearing before state court Judge Stanley Z. Goodfarb. At the hearing, Judge Goodfarb interrogated Rinaldo's

attorney, Mr. Petica, who personally negotiated the settlement in open court. The following colloquy between Judge Goodfarb and Rinaldo's counsel, Mr. Petica, and the findings and order entered by Judge Goodfarb as a result of that hearing are determinative of the Petition for Writ of Certiorari filed in this Court:

"THE COURT: The problem here seems to be with regard to the settlement, as to whether or not the settlement included a waiver of some $300,000 which was owed from Roadrunner to–Rinaldo to Roadrunner on the purchase; you're aware of that aren't you Ron?

MR. PETICA: I am aware of Mr. Smith's position on it.

THE COURT: Alright. Now, you were involved in that settlement, and it took place in my courtroom during the trial that I was holding; isn't that right?

MR. PETICA: Yes, your Honor.

THE COURT: Did the settlement include anything about the $300,000?

MR. PETICA: May it please the Court, I reiterate in my affidavit that I filed, that is, that at the time the settlement was entered into, the $300,000 underlying mortgage and obligation never entered my thought processes, my mind one way or the other. I did not conceive of it.

• • •

THE COURT: Don't you think, Mr. Petica, that if the $300,000 had been a part of the settlement transaction, you would have been aware of it? You only had a settlement that really involved some $17,000?

MR. PETICA: That is correct.

THE COURT: Okay. Now, if the $300,000 was being waived, Mr. Petica, don't you think that you as a careful and competent lawyer would have been aware of that?

MR. PETICA: The Court is asking me a question I can't answer. I was aware–

THE COURT: Mr. Petica, I am very concerned about

this matter, and if this matter is going to be handled on this type of—on this basis, on this type of basis with this—and we are getting involved in something like this, I want you to be very careful and quite understanding because if this situation continues like this and I have any questions in my mind as to the dealings of the attorneys and the parties in this case, I am going to refer it to the State Bar. I want that straight out on the table.

* * *

THE COURT: Don't you think Mr. Petica, that if the $300,000 had been included in the agreement, that you, as the counsel for Rinaldo would have known about it? Don't you think there would have been some mention of it to you, Mr. Petica?

MR. PETICA: Obviously the answer is yes, but on the other hand, nobody said anything about it. It was not mentioned.

THE COURT: Mr. Petica, I want you to understand something. I am not accusing you or Mr. Smith of anything, but it occurred in my court, and we tried this case, and I don't—from my understanding of what went on, I am a little shocked as to what occurred hereafter, not as to you because I think a claim like this without counsel being aware of it is a rather interesting footnote to what I saw in that court. Now, you're telling me that you were not aware of it and there was no mention made that the settlement was to include a waiver of the then outstanding obligation between Roadrunner Lake Parks and John Rinaldo Limited Partnership; is that correct?

MR. PETICA: It was never discussed.

* * *

THE COURT: . . . I was pretty well aware of what the general terms of the settlement was to be, and I am a little shocked at the way Mr. Rinaldo took it. I was not really unfavorably impressed but I was—what I was feared of and what it indicated to me really, Mr. Rinaldo's testimony, though I am not saying I fully made up my mind—I want to hear all the rest of it—but I want to tell you that I felt like Mr. Rinaldo was trying to take advantage of every dotted "i" and "t" when

in fact the intent of the parties was fairly clear." (Reporter's Transcript of Proceedings; November 12, 1976; pp. 2-11).

Upon completing his interrogation of Rinaldo's attorney, Judge Goodfarb granted Roadrunner's Motion to Set Aside the Settlement and Dismissal and found in his Minute Order dated December 1, 1976:

> "1. The prior order of dismissal was set aside, as it was clear from the record that the *dismissal was predicated upon a negotiated settlement the terms of which are unclear, not agreed to by both parties, ambiguous, and that there was therefore no mutual meeting of the minds of both parties as to that negotiated settlement between the parties of this case.*
>
> • • •
>
> 3. *Since the settlement was ineffective*, and the order of dismissal set aside, the court is now returned to its position as trier of fact on the original allegations of the complaint, as to which it has heard approximately 1/2 to 2/3 of the case." (Emphasis supplied.)

Judge Goodfarb's Order was affirmed by the Arizona Court of Appeals

Rinaldo thereafter failed to make payments on the purchase money note/deed of trust and accordingly a Trustee's Sale under the power of sale in the deed of trust was scheduled. Still relying upon the aborted release instrument, Rinaldo then filed suit in Federal Court in this action to enjoin the Trustee's Sale. The injunction was granted and summary judgment was entered in favor of Rinaldo holding that the subject release instrument signed by Roadrunner as part of the state court pro-rate suit released Rinaldo from the $332,215.36 purchase money note/deed of trust. The District Court's Judgment also ordered the release of the deed of trust from the property.

On appeal, the Ninth Circuit Court of Appeals reversed and remanded for entry of summary judgment in favor of Roadrunner. In its memorandum opinion the Court of Appeals held:

> "The mutual release was not an independent agreement; it was an integral part of the settlement agreement. Since the settlement agreement was set aside, the mutual release must necessarily fail for lack of consideration. Because Rinaldo's action is based on the mutual release, summary judgment should have been entered for Roadrunner."

Rinaldo's Petition for Rehearing was denied and his Motion to Stay the Mandate pending his Petition for Writ of Certiorari was also denied.

Thus, Rinaldo's claim that he has been deprived of his property rights without notice or hearing has no basis in fact or in the record. In truth, Rinaldo has actually litigated the effect of the release instrument in both state and Federal Court, which has resulted in final judgments against Rinaldo on that issue in both the Arizona Court of Appeals and the Ninth Circuit Court of Appeals.

The mandate of the Ninth Circuit Court of Appeals is not in conflict with the state court Judgment, but rather is consistent with that Judgment and gives it full faith and credit.

In Rinaldo's Petition, he extracts, out of context, an isolated statement made by Judge Goodfarb to the effect that he would not litigate the scope of the release (*i.e.*, whether or not it encompassed the $332,215.36 note/deed of trust). Rinaldo suggests that it somehow follows that the release survived the adjudication that the entire settlement agreement was void for failure of the parties to have a meeting of the minds. In reality, when Judge Goodfarb said he wasn't going

to litigate the scope of the release, he was clearly saying that he didn't have to litigate that issue since he found the entire settlement agreement void. That finding rendered the question as to the scope of the release moot.

The illogic of Rinaldo's present position that the release somehow survived Judge Goodfarb's ruling that the settlement was void, is highlighted by the fact that upon finding the settlement void, Judge Goodfarb re-set the case for trial so that he could hear the remaining evidence "on the questions of fact and law between the parties as indicated by the complaint and answer in this action. . . ." If, as Rinaldo claims, the release survived, then it would have released Rinaldo from the $18,000 pro-rate claim, and there would have been no reason for Judge Goodfarb to re-set the case for trial.

ARGUMENT

It should be apparent that this case involves nothing more than the interpretation of contract documents and their enforceability among the parties at suit. There is no important "federal question" involved here nor does this case bring-up matters of great public interest.

The limited function of a Writ of Certiorari was explained in *Magnum Import Co. v. Cody*, 262 U.S. 159, 67 L. Ed. 922, 43 S. Ct. 531 (1923) as follows:

> "The jurisdiction to bring-up cases by certiorari from the Circuit Courts of Appeals was given for two purposes, first to secure uniformity of decision between those courts in the nine circuits, and second to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this

> court merely to give the defeated party in the Circuit Court of Appeals another hearing. Our experience shows that 80 per cent of those who petition for certiorari do not appreciate those necessary limitations upon our issue of the writ." (43 S. Ct. 532).

Rinaldo's Petition for Certiorari falls within the 80 per cent group of those who do not appreciate the necessary limitations upon the Supreme Court's issuance of such a Writ. A Petition for a Writ of Certiorari should only be filed when questions of gravity and importance are involved because circuit courts of appeals were created for the purpose of relieving the Supreme Court of the oppressive burden of general litigation which impedes the examination and disposition of cases of public concern. *In Re Woods*, 143 U.S. 202, 36 L. Ed. 125, 12 S. Ct. 417 (1892). Regardless of how important a case may be to the petitioner, the question involved is whether the case deals with principles, the settlement of which is of importance to the public or where there is a conflict between decisions of the state and Federal Courts or between those of Federal Courts of different circuits. Certiorari would also be appropriate if the case affected the relations of this nation to foreign nations. *Thomas M. Fields v. United States*, 205 U.S. 292, 51 L. Ed. 807, 27 S. Ct. 543 (1907). It is not the function of a Writ of Certiorari to review a conflict of evidence "nor to reverse a Court of Appeals because were we in its place we would find the record tilting either way". *National Labor Relations Board v. Pittsburgh S.S. Co.*, 340 U.S. 498, 95 L. Ed. 479, 71 S. Ct. 453, 456 (1951).

Since this is a diversity case, by definition it does not raise any questions in conflict among the different circuits, nor does it raise any principle of grave importance to the

public. It simply is a matter of contract documents and their enforceability among the parties at suit. Even if Rinaldo could craft an intellectually interesting issue, that would not be enough because the Supreme Court does not sit to satisfy a scholarly interest in such issues, nor does it sit for the benefit of the particular litigant. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 99 L. Ed. 897, 75 S. Ct. 614, 617 (1955).

CONCLUSION

Although Rinaldo has clearly attempted to disguise this ordinary contract dispute to appear like a constitutional issue grave public concern, in reality the issues presented do not even begin to satisfy the strict criteria necessarily imposed upon Petitions for Certiorari. Based upon the foregoing, Roadrunner respectfully requests the Court to deny Rinaldo's Petition for Writ of Certiorari.

RESPECTFULLY SUBMITTED this 16th day of August, 1982.

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